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THE CITY OF NEW YORK
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY
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July 7, 1992

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: In the Matter of Billed Party Preference for 0+ InterLATA Calls (CC Docket No. 92-77)

Dear Ms. Searcy:

Enclosed please find an electronic reproduction of the original Comments of the New York City Department of Telecommunications and Energy in the above-referenced proceeding, and nine copies of the Comments. The original of the Comments will be retained in the office of the undersigned in accordance with Section 1.52 of the Commission's Rules.

Should any questions arise in connection with this matter, please contact the undersigned at (212) 788-6549.

Very truly yours,

Eileen E. Huggard

Eileen E. Huggard
Assistant Commissioner

Enclosures

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List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Billed Party Preference for 0+ InterLATA Calls	)	CC Docket No. 92-77

COMMENTS OF THE NEW YORK CITY DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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July 7, 1992

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SUMMARY

The New York City Department of Telecommunications and Energy ("City of New York") urges the Federal Communications Commission ("Commission") to carefully weigh the costs and benefits of implementing a mandatory billed party preference system. The City of New York, which had begun to implement a comprehensive pay telephone program, questions whether the mandatory implementation of billed party preference is justified in light of the passage of the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA"), which assures that consumers have access to their preferred carrier, and the substantial cost of implementing a billed party preference system.

Implementation of billed party preference will certainly require significant investment on the part of carriers. It is reasonable to assume that all service providers will seek to recover the investment from all ratepayers. Therefore, the overall cost of telephone service will be unnecessarily higher.

Of particular concern to the City of New York is the potential impact of billed party preference on competition in the operator service and pay telephone markets. In adopting a billed party preference system, the Commission may succeed in assuring more convenient access to operator service providers at public telephones at the expense of limiting the number of telephones and new and enhanced services available to consumers.

Billed party preference may be a premature and unreasonably expensive solution to a problem which may be reasonably addressed by current regulations. The Commission and the operator service industry should devote additional resources to implementing and educating consumers about current access requirements.

Before the
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In the Matter of	)	
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Billed Party Preference for 0+ InterLATA Calls	)	CC Docket No. 92-77
	)	

COMMENTS OF THE NEW YORK CITY
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

The New York City Department of Telecommunications and Energy ("City of New York" or "City") respectfully submits these comments in response to the Federal Communications Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.1/

I. INTRODUCTION

On April 9, 1992, the Federal Communications Commission ("Commission") adopted a Notice of Proposed Rulemaking in this proceeding, proposing to mandate a nationwide system of "billed party preference" for all interexchange calls dialed on a "0+" basis (i.e., "0" plus an interexchange number, with no access code preceding the "0"). Under this proposed call routing methodology, interexchange calls dialed from equal access areas on a 0+ basis would be routed by the local exchange carrier to the operator service provider ("OSP") previously chosen by the party being billed for the call. (At this time, calls dialed

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1/ Billed Party Preference for 0+ InterLATA Calls, Notice of Proposed Rulemaking, 7 FCC Rcd 3027 (1992) (hereinafter "Notice").

on a 0+ basis are routed to the OSP previously chosen by the owner of the telephone or by the owner of the premises on which the telephone is located.) The Commission has tentatively concluded that "in concept, a nationwide system of billed party preference ... is in the public interest."2/

In the Notice, the Commission cites three primary reasons for mandating billed party preference. First, the Commission states that "billed party preference could make operator services more 'user-friendly.'"3/ The Commission noted:

> During the last several years, there have been significant changes in the operator services industry. One of the consequences of these changes is that making an operator service call, particularly from a public phone, has become more complex and confusing to many consumers. Consumers have not only been confused by the division of responsibilities between the local and long-distance telephone companies, but also frustrated and confused by call blocking, their mistaken assumptions as to which carrier will handle their call when they use a particular calling card, and by the need to use access codes, and to know when to use them.4/

Billed party preference would minimize the level of consumer frustration associated with operator-assisted 0+ calls by automatically routing these calls to the OSP previously chosen by the billed party to handle the calls.

Second, the Commission states that an "apparent advantage of billed party preference is that it would focus competition in operator services towards end users."5/ Currently, OSPs compete

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2/ Notice at 3029.

3/ Notice at 3030.

4/ Notice at 3029-30.

5/ Notice at 3030.

for 0+ presubscription contracts by offering commission payments on 0+ calls to payphone owners and other aggregators. Billed party preference, the Commission asserts, "would redirect the competitive efforts of OSPs towards providing better services and lower prices to end users, as opposed to paying higher commissions."6/

Third, the Commission notes that billed party preference "might increase parity in the operator services marketplace."7/ The current presubscription system, the Commission asserts, favors the OSP with the largest number of customers as that OSP can offer higher commission payments than OSPs with fewer customers.

The Commission, however, has not determined conclusively that the potential benefits of billed party preference, when weighed against its potential disadvantages, merit its implementation on a mandatory basis.8/ The disadvantages, identified by commenters in two previous rounds of comments on the issue of billed party preference, include the direct financial cost of implementing billed party preference, and its potential impact on competition in the operator service and pay telephone markets. In addition, many commenters noted that the Telephone Operator Consumer Services Improvement Act ("TOCSIA"), enacted by Congress in 1990, already assures consumers that

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6/ Id.

7/ Id.

8/ See Notice at 3031 ("Notwithstanding that billed party preference would appear to offer a number of public interest benefits, we need more information before we can mandate implementation of billed party preference and determine exactly how this service should be structured").

they will have access to their preferred operator service provider -- the primary objective that the Commission hopes to achieve by mandating a billed party preference system.9/

Accordingly, the Commission has requested additional comment on: (1) the costs of a billed party preference system; (2) whether billed party preference would require callers to provide call and billing information twice before the call would be completed; (3) the impact billed party preference would have on access times for operator service calls; (4) the impact billed party preference might have on competition in the provision of pay telephones; and (5) whether some or all of the benefits of billed party preference might be obtainable through alternative, less costly technologies.10/

II. STATEMENT OF INTEREST AND SUMMARY OF POSITION

The City of New York appreciates the Commission's decision to move cautiously as it considers the merits of mandating a nationwide system of billed party preference. The City and its business community and residential consumers will be affected in a number of ways by billed party preference, and the City is concerned that the adoption of a mandatory billed party preference system may not be in the public interest.

New York City's size and density make it a unique marketplace for pay telephones. There are over 70,000 pay telephones in New York City. On City sidewalks and in City owned or leased buildings there are approximately 12,000

9/ 47 U.S.C. Section 226 (1991).

10/ See Notice at 3031-32.

New York Telephone Company pay telephones, for which the City is the "premises owner."

The City currently is implementing a comprehensive pay telephone program, and has determined that the public telephone needs of the City's consumers will be served best by a competitive pay telephone market. Thus, in implementing its program, the City will rely in large part on the pro-competitive regulatory decisions adopted by this Commission and the New York State Public Service Commission, which permitted new companies to enter the pay telephone marketplace and encouraged the offering of new and enhanced services.

In these comments, the City of New York questions whether the mandatory implementation of billed party preference is justified, even appropriate, in light of the passage of TOCSIA, which assures that consumers have access to their preferred carrier, and the potential substantial cost of implementing a billed party preference system. The Commission may be able to achieve the objective of implementing a billed party preference system without requiring a significant investment on the part of telecommunications providers.

Of particular concern to the City is the potential impact of billed party preference on overall rates and competition in the pay telephone and operator service markets. Billed party preference, as discussed below, may significantly impair competition in these markets. The City therefore urges the Commission to carefully consider the implications of billed party preference for competition before mandating its implementation. The Commission may succeed in assuring more convenient access to OSPs at public telephones at the expense of limiting the number of telephones and new and enhanced services available to consumers.

III. DISCUSSION

A. The Commission Should Carefully Weigh the Costs and Benefits of Billed Party Preference

The Commission has tentatively concluded that "in concept, a nationwide system of billed party preference ... is in the public interest."11/ The primary objective of implementing a billed party preference system is to assure consumers that they have access to the carrier of their choice at all aggregator telephones.

The passage of TOCSIA, however, already assures consumers that they will have access to their preferred carrier at these locations. Under the regulations adopted by the Commission pursuant to TOCSIA, all aggregators today must provide consumers with access at public telephones to their preferred carrier through 800 number and 950-10XX access codes. In addition, when the Commission's regulations (as amended on reconsideration) are fully implemented, consumers will be able to reach their preferred carrier through 10XXX access codes. Therefore, the issue presently before the Commission is whether the added convenience offered by billed party preference of reaching a pre-selected carrier without dialing an access code outweighs its cost, both in terms of its direct financial cost and its potential impact on competition.

As the Commission reports, the direct financial cost of implementing a mandatory billed party preference system may be substantial. Cost estimates range upward to well over 500 million dollars.12/ Undoubtedly, this cost will affect,

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11/ Notice at 3029.

12/ Notice at 3031.

directly or indirectly, operator service rates paid by consumers.

In weighing the cost of billed party preference, the Commission should also consider the costs that will be incurred by aggregators to comply with the access regulations enacted by the Commission pursuant to TOCSIA. The industry is making a significant investment today to assure access as aggregators modify and replace equipment to permit the access code dialing required by TOCSIA.

The City notes that the implementation of yet another routing methodology and calling protocol, implemented after TOCSIA requirements have been fully implemented, may not only unreasonably require the expenditure of additional resources but may further confuse consumers. The Commission has noted that "since billed party preference could apparently not be deployed for at least a few years, callers will have had that much more time to adjust to and become more comfortable with access code dialing."13/ Accordingly, the City questions whether it is in the best interests of consumers to implement two different access methodologies over the course of the next several years. Instead, the Commission should consider implementing consumer education programs, requiring the industry to devote $50 million -- only a fraction of the potential cost of billed party preference -- to educate consumers about current access means.

13/ Notice at 3030.

B. The Commission Should Carefully Consider the Potential Impact of Billed Party Preference on Competition in the Operator Service and Pay Telephone Markets

The Commission states that "it appears that billed party preference has the potential to be procompetitive, not anticompetitive."14/ The City of New York disagrees, and urges the Commission to carefully consider the potential impact of billed party preference on competition in the operator service and pay telephone markets. As Congress and the Commission have determined that we will rely primarily on competition in these markets to ensure that the best interests of consumers are met, the Commission should act cautiously before adopting any measures which might stifle or harm the development of that competition.

The City believes that billed party preference may have an adverse impact on competition in the operator service and pay telephone markets. The Competitive Telecommunications Association ("CompTel") and International Telecharge, Inc. ("ITI"), in joint Supplemental Comments, aptly described the potential impact of billed party preference on competition in the OSP market:

> [Billed party preference] would remove the operator processing functions for all 0+ long distance calls — about 20 percent of all interexchange traffic — from their current competitive status and integrate them into the local exchange access monopoly. The development of competition in long distance operator assisted calling would be terminated as interexchange carriers would be reduced to mere providers of transport services.15/

14/ Notice at 3031.

15/ "Joint Supplemental Comments of the Competitive Telecommunications Association and International Telecharge, Inc.," filed November 22, 1991 in RM-6723, at 11.

The result, according to CompTel and ITI would be that the "innovative uses of operators, for hotel concierge service, multi-lingual capability, and so on, and the competitive pressures they have placed on dominant carriers, would cease."16/

Similarly, billed party preference may harm the development of competition in the pay telephone market to the detriment of consumers, particularly if less phones are made available. As Congress noted in enacting TOCSIA, "aggregators make a valuable contribution by making telephones publicly available to consumers for access to the interstate network."17/

16/ Id.

17/ H.R. Rep. No. 213, 101st Cong., 1st Sess. 12 (1989).

For the same reason, the Commission's concern with the payment of commissions to aggregators is unfounded.18/ As CompTel and ITI noted:

> There are public interest benefits to allowing carriers to pay commissions to premises owners for the right to be the carrier presubscribed to that payphone. The most obvious benefit is that if proprietors are permitted to profit from installing payphones on their premises, there will more public phones available for the convenience of the transient public.19/

This has been our experience in New York City. Since the pay telephone market was opened to competition, the number of pay telephones available to consumers in the City has grown

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18/ The Commission's concern with the relationship between commissions and OSP rates also is unfounded. The City notes that if commission payments are eliminated as the basis of compensation, then the same considerations of fairness and equity that led the Commission in CC Docket No. 91-35 to conclude that independent pay telephone providers should be compensated for access code calls would require that aggregators be compensated for billed party preference calls. As the Commission determined in that proceeding:

> We conclude that considerations of equity require us to prescribe compensation. The Operator Services Act and our rules require that payphone owners allow consumers to use payphone equipment for access code calls. By providing the equipment through which the consumer initiates calls to the OSP of choice, the payphone owner is benefiting the public but is not guaranteed any revenue for access code calls. In addition, the payphone owner must expend financial resources to maintain the equipment. It is only fair that these costs be shared by consumers who benefit from the ability to make access code calls and by OSPs who derive revenue from the calls.

<u>Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation</u>, 6 FCC Rcd 4736, 4745-46 (1991), <u>Memorandum Opinion and Order</u>, ___ FCC Rcd ___ (1992).

19/ "Joint Supplemental Comments of the Competitive Telecommunications Association and International Telecharge, Inc.," filed November 22, 1991 in RM-6723, at 12.

significantly. In addition to approximately 57,000 New York Telephone Company pay telephones, there now are an estimated 15,000 independently operated pay telephones in New York City. Many of the new pay telephones are located in previously underserved areas.

The pay telephone policy adopted by the City establishes as the first objective enhancing the public's safety and convenience by expanding the number of pay telephones operating on City streets. It also is intended to improve the quality of service and broaden the distribution of pay telephones into underserved areas. In certain areas of the City, as many as 20% of households have no residential telephone service, making the pay telephone a "lifeline" to emergency services.20/

Finally, the City believes that billed party preference is potentially at odds with the competitive regulatory framework for operator services and pay telephones adopted by Congress and the Commission. In enacting TOCSIA, Congress noted:

> This legislation will ensure that each consumer if given the information and opportunity to make an informed choice of the desired operator services carrier. Only when callers are capable of making informed choices will true competition arise in this industry. The bill will help to protect consumers from the problems caused by the entrance of these

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20/ After the necessary legislative approvals are granted, the City will grant franchises to qualified companies for the provision of pay telephone service on City sidewalks. As mandated by the recently revised Charter of the City of New York, the Department of Telecommunications and Energy has proposed an "Authorizing Resolution" to the City Council for the authority to issue Requests for Proposals for new pay telephone franchises. In addition, the Department has proposed amending the City's Administrative Code, which outlines permit requirements for telephones on City streets, to reflect the competitive pay telephone market in which there are multiple providers.

> new carriers while avoiding overly stringent regulation that could harm the development of a competitive operator services market.21/

The City, of course, is aware that a certain degree of regulatory intervention is required at this time to guard against practices that interfere with a consumer's ability to exercise an informed choice among service providers. The City, therefore, has actively supported the adoption of consumer protection requirements, including regulations prohibiting call blocking and mandating call branding.22/ Billed party preference, however, may be a premature and unreasonably expensive solution to a problem which may be reasonably addressed by current regulations. At a minimum, the City believes the Commission and the OSP industry should devote additional resources to implementing and educating consumers about current access requirements.

21/ S. Rep. No. 439, 101st Cong., 2d Sess. 5 (1990).

22/ See, e.g., "Comments of the New York City Department of Telecommunications," filed September 6, 1990 in CC Docket No. 90-313.

IV. CONCLUSION

In conclusion, the City of New York respectfully urges the Commission to carefully consider whether the mandatory implementation of billed party preference is in the public interest.

Respectfully submitted,

NEW YORK CITY DEPARTMENT OF
TELECOMMUNICATIONS AND ENERGY

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Dated: July 7, 1992